

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Honolulu, Hawaii 96813

January 8, 2010

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF. No. 09HD-138

Hawaii

Grant of Perpetual, Non-Exclusive Easement to Motor Supply, Limited,
for Access and Utility Purposes over a Portion of Maile Street at the
Wailoa River State Recreation Area, Waiakea, South Hilo, Hawaii Tax
Map Key: 3rd/2-2-29:01 (por.)

APPLICANT:

Motor Supply, Limited, a Hawaii corporation.

LEGAL REFERENCE:

Section 171-13, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Waiakea situated at Wailoa River State Recreation Area,
South Hilo, Hawaii, Tax Map Key: 3rd/2-2-29:01, as shown on the attached map labeled
Exhibit A.

AREA:

Approximately 8,800 sq. ft. Exact area to be determined by survey conducted by the
Applicant, subject to review and verification by the Survey Division, Department of
Accounting and General Services. The length of the easement shall be the length of the
Applicant's parcel and the width of the easement shall not exceed forty feet (40').

ZONING:

State Land Use District: Urban
County of Hawaii CZO: Commercial General (CG-7.5); also within SMA

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii Constitution: YES ___ NO X

CURRENT USE STATUS:

Encumbered under Governor's Executive Order No. 2921 to the Department of Land and Natural Resources, Division of State Parks for State Park Purposes.

CHARACTER OF USE:

Right, privilege and authority to construct, use, maintain, and repair a right-of-way over, under and across State-owned land for access and utility purposes.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

One-time payment to be determined by independent or staff appraisal establishing fair market rent, subject to review and approval by the Chairperson.

CHAPTER 343-ENVIRONMENTAL IMPACT STATEMENTS:

Notice of availability of the Draft Environmental Assessment was published in the May 8, 2008 edition of the OEQC's Environmental Notice. Notice of availability of the Final Environmental Assessment (Final EA) and the Finding of No Significant Impact (FONSI) were published in the August 8, 2008 edition of the Environmental Notice.

DCCA VERIFICATION:

Place of business registration confirmed:	Yes <u>√</u>	No ___
Registered business name confirmed:	Yes <u>√</u>	No ___
Applicant in good standing confirmed:	Yes <u>√</u>	No ___

APPLICANT REQUIREMENTS:

The Applicant shall be required to:

- 1) Pay for an appraisal to determine the one time payment and pay the consideration;
- 2) Provide survey maps and descriptions according to State DAGS standards;

- 3) Obtain a title report to ascertain ownership, where necessary, subject to review and approval by the Department;
- 4) Submit a plan for approval by the Chairperson for the installation of a parking control barrier (such as a guard rail or appropriately spaced bollards) that restricts vehicular access between Maile Street and the surrounding State Parks property, and install same after plan approval;
- 5) Submit a plan for approval by the Chairperson for the installation of no parking signage along both sides of Maile Street. The plan shall include, but shall not be limited to, sign wording, sign post height, placement, and number of signs. Install same after plan approval;
- 6) Submit construction plans for approval by the Chairperson prior to the commencement of any work activity within the easement area;
- 7) All utility service lines shall be installed utilizing best management practices of the respective utility industry;
- 8) Obtain a Special Management Area (SMA) permit or SMA exemption, as applicable; and
- 9) All costs incurred in Applicant's compliance with the foregoing Applicant's Requirements shall be borne by Applicant.

REMARKS:

The Applicant, Motor Supply, Limited (Applicant), requests an easement for access and utility purposes over a portion of Maile Street at the Wailoa River State Recreation Area (WRSRA) in Hilo to serve the Applicant's property, Tax Map Key: 3rd/2-2-53:06 (Parcel 6). Parcel 6 is a 16,529 square foot, commercially zoned parcel on Kilauea Avenue near the intersection with Mohouli Street. See Exhibits A and B attached.

The legal access to the Parcel 6 is from Kilauea Avenue. However, over the years, drainage improvements and the installation of traffic signal control boxes and poles along Kilauea Avenue fronting Parcel 6 have impeded Applicant's legal access to the parcel. As a result, Applicant has requested an easement over an adjacent road on State Parks land for access and utilities.

Maile Street is a portion of the lands encumbered under Governor's Executive Order No. 2921 to the Department of Land and Natural Resources for State Park Purposes. The road is posted with a street sign bearing the name "Maile Street" and the public has unrestricted access over it. However, the road is not a dedicated County highway and technically remains an internal road of the WRSRA.

State Parks concurs to a grant of easement over a portion of Maile Street as indicated in yellow on Exhibit B, provided that Applicant erect an acceptable barrier and signage along the north side of the easement that will prevent Applicant's customers from parking on State Parks land, and provided further that Applicant satisfy the other Applicant Requirements listed above. Additionally, State Parks requires that Applicant be

responsible for maintenance of the easement area, including the trimming of any vegetation growing into the easement area from Parcel 6, even though the road is used by persons other than Applicant and its customers. With respect to this concern, staff notes that the standard easement form used by the Department of the Attorney General includes a provision requiring the grantee to maintain the easement area in a safe, clean, sanitary and orderly condition. Staff believes the standard easement language should address State Parks' concerns on maintenance.

By Land Office Deed S-28,753 dated January 7, 2005, the State issued the County of Hawaii a non-exclusive easement to maintain a sewer line and sewer pump station within the WRSRA. Applicant's proposed easement corridor would overlap a portion of the County's sewer line easement. In the grant of easement to the County, the State reserved the right to grant other users rights and privileges in the easement area provided that such grants did not unreasonably interfere with the County's use of the easement. Applicant has advised staff that Applicant has consulted with the County on this sewer easement and that Applicant's proposed access and utility easement would not have any effect on the County sewer line. To confirm the County's notice of Applicant's proposed easement, staff will send a copy of this submittal to the County Department of Environmental Management, Wastewater Division, when this matter is confirmed on the Land Board's agenda.

The proposed easement area is also within the SMA according to the County Planning Department, and Applicant will need to comply with the SMA requirements applicable to its project.

Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

Applicant has already completed the environmental review process on its proposed use of State lands pursuant to Chapter 343, Hawaii Revised Statutes, and has received a FONSI. That process included solicitation of comments from government agencies. Accordingly, staff has not requested separate comments on the present submittal.

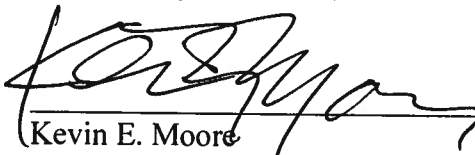
RECOMMENDATIONS:

That the Board:

1. Authorize the subject requests to be applicable in the event of a change in the ownership of the abutting parcel described as Tax Map Key: 3rd/2-2-53:06, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.

2. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a perpetual non-exclusive easement to Motor Supply, Limited covering the subject area for access and utility purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current perpetual easement document form, as may be amended from time to time;
 - B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: 3rd/2-2-53:06, provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from this easement document;
 - C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,


Kevin E. Moore
District Land Agent

APPROVED FOR SUBMITTAL:



LAURA H. THIELEN, Chairperson



Figure 2
TMK Map

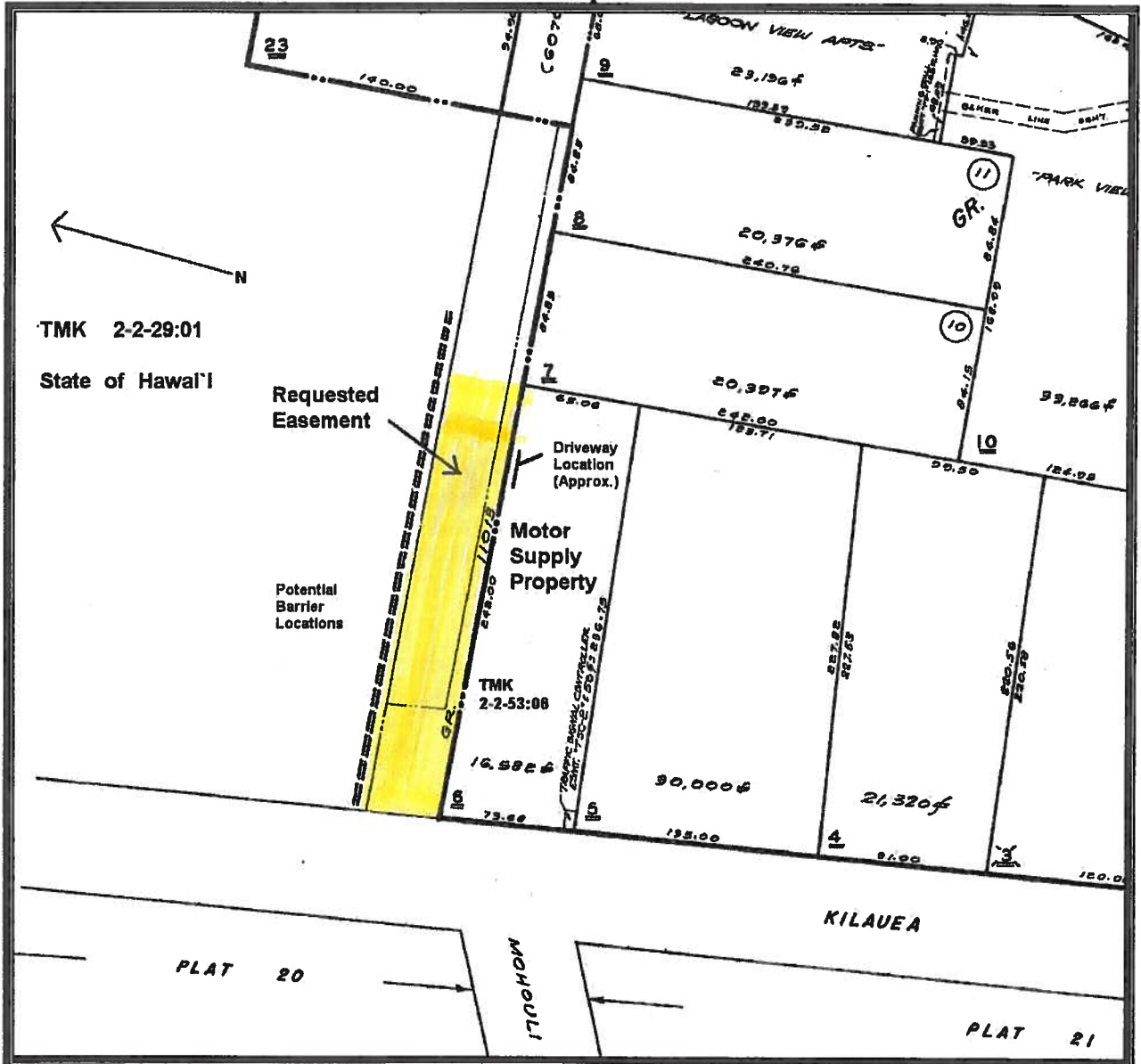


EXHIBIT B

Motor Supply, Ltd. Purchase of Easement on State Land at Maile Street Environmental Assessment